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3 UNITED STATES DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA

5  
6 JOANN MOUTON,

7 Plaintiff,

No. C 13-4121 EDL (PR)

8 v.

9 VILLAGRAN, et. al.,

10 Defendants.

11 \_\_\_\_\_ /  
12 ORDER DISMISSING WITH  
13 LEAVE TO AMEND

14 Plaintiff, a state prisoner currently incarcerated at Central California Women's  
15 Facility, has filed a second amended pro se civil rights complaint under 42 U.S.C. § 1983.  
16 Previously, plaintiff's complaint and amended complaint were dismissed with leave to  
17 amend.

18 DISCUSSION

19 A. Standard of Review

20 Federal courts must engage in a preliminary screening of cases in which prisoners  
21 seek redress from a governmental entity or officer or employee of a governmental entity.  
22 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and  
23 dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may  
24 be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at  
25 § 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica*  
26 *Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

27 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
28 elements: (1) that a right secured by the Constitution or laws of the United States was  
violated, and (2) that the alleged deprivation was committed by a person acting under the  
color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

1     **B. Legal Claims**

2         In the underlying second amended complaint, plaintiff alleges that defendant Sheriff  
3         Villagran allowed plaintiff, a Level 4 inmate, to get off the bus while in shackles, which was  
4         very unsafe for plaintiff. Plaintiff states that she had a walker due to her muscular disorder.  
5         Plaintiff also alleges that defendant Nurse Zamora was aware of plaintiff's muscular  
6         disorder, but rather than treat plaintiff after plaintiff fell, Nurse Zamora went to have lunch.  
7         As a result of the fall, plaintiff broke her tooth and damaged her spine.

8             In the court's previous dismissal with leave to amend, the court informed plaintiff that  
9         her amended complaint was deficient and failed to allege a cognizable civil rights claim.  
10       The court then informed plaintiff what she needed to show in order to demonstrate that a  
11       state actor was deliberately indifferent to plaintiff's safety needs or serious medical needs.  
12       The court specifically informed plaintiff that, as stated, plaintiff's amended complaint did not  
13       clearly allege how Sheriff Villagran was deliberately indifferent, how he could have  
14       prevented plaintiff's fall, or whether Sheriff Villagran was aware of plaintiff's muscular  
15       disorder. Moreover, plaintiff's allegations failed to show how Nurse Zamora was  
16       deliberately indifferent and failed to allege what an x-ray would have revealed, had Nurse  
17       Zamora given her one. The court dismissed plaintiff's amended complaint with leave to  
18       amend for plaintiff to provide more information with respect to the standards that the court  
19       had provided.

20             As before, in plaintiff's second amended complaint, there is no allegation that Sheriff  
21         Villagran was aware of plaintiff's muscular disorder, that Sheriff Villagran knew that plaintiff  
22         needed assistance, or how Sheriff Villagran could have prevented plaintiff's fall. Nor does  
23         plaintiff provide any detail about her muscular disorder. In addition, plaintiff still fails to  
24         proffer any facts demonstrating that Nurse Zamora knew plaintiff needed more treatment  
25         than she was given, and knew that without such treatment, plaintiff faced a substantial risk  
26         of serious harm.

27             Again, as currently pled, these allegations fail to state a constitutional violation. In  
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1 order to state a claim, "[f]actual allegations must be enough to raise a right to relief above  
2 the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations  
3 omitted). A complaint must proffer "enough facts to state a claim to relief that is plausible  
4 on its face." *Id.* at 570. "A claim has facial plausibility when the plaintiff pleads factual  
5 content that allows the court to draw the reasonable inference that the defendant is liable  
6 for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiff has not  
7 alleged enough facts to liberally construe that defendants were deliberately indifferent to  
8 her safety needs or serious medical needs.

9 Plaintiff will be given one final opportunity to provide enough facts to state a  
10 cognizable claim for relief if she can do so in good faith. Failure to file a third amended  
11 complaint within twenty-eight days and in accordance with this order will result in a finding  
12 that further leave to amend would be futile, and this action will be dismissed.

### 13 CONCLUSION

14 1. The second amended complaint is **DISMISSED** with leave to amend in  
15 accordance with the standards set forth above. The third amended complaint must be filed  
16 within **twenty-eight (28) days** of the date this order is filed and must include the caption  
17 and civil case number used in this order and the words THIRD AMENDED COMPLAINT on  
18 the first page. Because an amended complaint completely replaces any previous  
19 complaints, plaintiff must include in it all the claims she wishes to present. See *Ferdik v.*  
20 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). She may not incorporate material from the  
21 previous complaints by reference. **Failure to file a third amended complaint in**  
22 **accordance with this order will result in a finding that further leave to amend would**  
23 **be futile, and this action will be dismissed.**

24 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
25 court informed of any change of address by filing a separate paper with the clerk headed  
26 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.  
27 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to  
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1 Federal Rule of Civil Procedure 41(b).

2 **IT IS SO ORDERED.**

3 Dated: July 15, 2014.

  
ELIZABETH D. LAPORTE

4 United States Chief Magistrate Judge

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